



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

Case #: FOF - 161049

Pursuant to petition filed October 15, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify [REDACTED] from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on Tuesday, January 27, 2015 at 01:00 PM at , Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Washington County.
2. On January 7, 2013, the Respondent completed an application for food stamps in Colorado, indicating that she lived in [REDACTED] (Exhibit 7)

3. The Respondent received food stamps from Colorado on April 3, 2013, May 2013 and June 2013. (Exhibit 6)
4. On April 24, 2013, the Respondent completed an on-line ACCESS application for FoodShare benefits, indicating that she was living in Wisconsin. The Respondent electronically signed the application, that the application was correct and complete. The Respondent further indicated that she understood the penalties for giving false information and breaking the rules. (Exhibit 3)
5. The Respondent received FoodShare benefits in Wisconsin in April, May and June 2013. (Exhibit 4)
6. On October 15, 2014, the Office of Inspector General (OIG) prepared an Administrative Disqualification Hearing Notice alleging that between April 2013 and June 2013, the Respondent provided false information to obtain benefits for which she was not eligible. (Exhibit 1)

DISCUSSION

What is an Intentional Program Violation?

7 C.F.R. §273.16(c) states that Intentional Program Violations “shall consist of having intentionally: 1) Made a false or misleading statement or misrepresented facts; or 2) Committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization card or any other reusable documents used as part of an automated delivery system (access device).”

The Department’s written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

FoodShare Wisconsin Handbook, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

What is OIG’s burden of Proof?

In order for the agency to establish that a FoodShare recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence"(a.k.a. "more likely than not") used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that "it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable." 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the elements have been shown.

The Merits of OIG's Case

In the case at hand, the Office of the Inspector General (OIG) asserts that the Respondent violated the rules of the FoodShare Program by lying about her residence between April 24, 2013 and June 30, 2013.

"A household shall live in the State in which it files an application for participation" in the food stamp program. 7 CFR §273.3(a)

Per 7 C.F.R. §273.16(b)(5), "an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years." See also *FoodShare Wisconsin Handbook*, § 3.14.12

Exhibit 4 is a Confirmed Assistance Group Eligibility History for the Respondent. It is reliable as a regularly kept business record of the Wisconsin Department of Health Services. Exhibit 4 shows that the Respondent was approved for and received FoodShare benefits in Wisconsin between April and June 2013.

According to the Administrative Disqualification Hearing Notice, OIG asserts that the Respondent misrepresented his residence in order to receive dual benefits from Wisconsin and Colorado.

With regard to the Wisconsin application, there is no evidence that the Respondent lied when she reported living in Wisconsin. Indeed, her Wisconsin EBT card usage was almost exclusively in Milwaukee, Wisconsin between April and June 2013. (See Exhibit 8) Further, looking at the Respondent's EBT usage from the Colorado benefits; there are no spending transactions between April 14, 2013 and June 12, 2013, which would seem to indicate a change in the Respondent's circumstances. (Exhibit 6)

The question then, is whether the Respondent lied to Colorado about her residence. There is no evidence that the Respondent lied on her January 2013 application for Colorado benefits. OIG argues that a letter dated August 12, 2013 addressed to a RY for the Respondent from the Social Security Administration proves that the Respondent was living in Minnesota between August and November 2013. However, a letter addressed to RY, on behalf of the Respondent, is not the same as a letter addressed to the Respondent and as such, does not necessarily mean that the Respondent was living in Minnesota, especially since it is undisputed that RY is the Respondent's representative payee.

With regard to the issue of whether the Respondent lied to Minnesota about his residence, that is a more complex question. The Respondent testified credibly that he had been incarcerated in Minnesota and lived in Minnesota until he obtained an interstate transfer of his parole supervision to Wisconsin in 2013. Again, Exhibit 5 shows that the Respondent's EBT usage was in Minnesota on and before June 7, 2013. As such, it is reasonable to conclude that the Respondent was living in Minnesota until about June 7, 2013 and did not lie to Minnesota about his residence before June 7, 2013.

However, it is undisputed that the Respondent receives Social Security Disability Income and is therefore, considered disabled for food stamp purposes. It is also undisputed that the Respondent is the only person reported in his assistance group, though the Respondent testified that he now lives with RY. As such, the Respondent would need to report a change in residence to the Minnesota state agency by the 10th of the month, following the month of the change. *Section 0007.15.03 of the Minnesota Combined Manual.*¹ If the Respondent moved to Wisconsin in June 2012, he was obligated to report his move to Minnesota Authorities by August 10, 2012. *See also 7 CFR §273.12(a)*

It is undisputed that the Respondent did not advise Minnesota of his change in residence.

Since the 10-year disqualification that OIG seeks rests upon whether the Respondent made a fraudulent statement to Minnesota regarding his identity / residence; or made a fraudulent representation to Minnesota regarding his identity / residence, it would have been very helpful if OIG had obtained copies of the Petitioner's application for Minnesota benefits and any other verifications he provided to Minnesota between January 2013 and November 2013. Had OIG done so, there would be clear evidence of what the Respondent reported to Minnesota and when he reported that information to Minnesota.

¹ The Minnesota combined manual can be viewed on-line at:

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=cm_00070302

In the absence of such information, one must ask whether the Respondent's apparent lie of omission constitutes a fraudulent representation, since there is no evidence of a fraudulent statement made to Minnesota.

The Respondent asserts that he had no intention of violating the rules of the FoodShare program or the Minnesota SNAP program. The Respondent testified that he thought the state agencies would conduct a cross-match and that his benefits in Minnesota would be terminated once his Wisconsin benefits were approved. The Respondent's testimony might be more credible, had he not continued to receive and use the Minnesota benefits in Wisconsin for at least four months.

Based upon the Respondent's testimony that he believed Minnesota would cut off his benefits once he moved to Wisconsin, he clearly knew that he should not be receiving benefits in both states at the same time. The Respondent did not report his change of residence to Minnesota, as required, and perpetuated the misinformation that he was living in Minnesota by continuing to receive and use food stamp benefits issued by Minnesota, while living in Wisconsin. Under such circumstances, it is found that the Respondent's lie of omission constitutes a fraudulent representation about his residence made for the purpose of receiving duplicate benefits.

Intention is a subjective state of mind to be determined upon all the facts, Lecus v. American Mut. Ins. Co. of Boston, 81 Wis.2d 183 (1977), but there is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See John F. Jelke Co. v. Beck, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131.

There is no evidence in the record to rebut the presumption that the Respondent intentionally withheld information about his residence from the State of Minnesota, in order to receive duplicate benefits. On the contrary, the Respondent perpetuated the belief that he was residing in Minnesota for four months and continued to receive duplicate benefits in those months, even though he knew he wasn't supposed to.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that .
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN

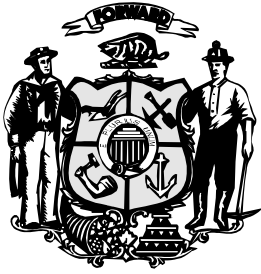
INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of February, 2015

\sMayumi Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Megan Ryan - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 9, 2015.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
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